

No. 75-1424

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

HENRY A. CIOVACCO, JR., PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT*

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
*Solicitor General,
Department of Justice,
Washington, D.C. 20530.*

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Petitioner contends that contraband discovered in a search of his airplane should have been suppressed, because he had not consented to the search and it therefore violated his Fourth Amendment rights.

Following a jury trial in the United States District Court for the District of Massachusetts, petitioner was convicted of possession of marihuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1), and of conspiracy to commit the substantive offense, in violation of 21 U.S.C. 846. He was sentenced to concurrent terms of two years' imprisonment to be followed by two years' special parole. The court of appeals summarily affirmed (Pet. App. 1a-2a) on the basis of its prior opinion (Pet. App. 3a-6a; 518 F.2d 29), in which it reversed the district court's suppression order (384 F. Supp. 1385).

1. The evidence at a pre-trial hearing and at trial showed that after petitioner landed a private airplane, and climbed out of it, federal agents approached him and asked his permission to inspect the airplane's cargo. The agents did not display weapons. Petitioner answered "O.K." to the request, and opened the plane's baggage door for the agents' inspection. The agents found approximately 200 pounds of marihuana inside (Tr. 56-62; Hr. 7-19; Pet. App. 3a-4a).¹

2. The district court granted petitioner's motion to suppress, on the ground that petitioner's consent to the search was involuntary since he was not aware of his right to withhold it. The court of appeals reversed, ruling that the finding of the district court was clearly erroneous; that under the totality of the circumstances the government had established that petitioner's consent was voluntary; and that knowledge of a right to refuse is not a prerequisite of voluntary consent (Pet. App. 4a-6a).

3. Petitioner contends that his consent to search was involuntary. The evidence showed, however, that the federal agents employed no force or threats in seeking his permission to inspect the airplane; petitioner agreed without apparent hesitation and opened the baggage compartment himself. The only fact found by the district court to support its conclusion that petitioner's consent was coerced was that petitioner was not aware of his right to withhold it. Such knowledge, however, is not a prerequisite of voluntary consent. *Schneckloth v. Bustamonte*, 412 U.S. 218.

¹"Tr." and "Hr." refer respectively to the trial transcript and the transcript of the pre-trial suppression hearing.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JUNE 1976.